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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/412,539 10/05/99 KUCERA

L 0044317U3

HM22/0112  
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EXAMINER

COLEMAN, B

ART UNIT

PAPER NUMBER

1611

4

DATE MAILED:

01/12/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/412,539**

Applicant(s)

**KUCERA et al.**

Examiner  
**Brenda Coleman**

Group Art Unit  
**1611**



☐ Responsive to communication(s) filed on \_\_\_\_\_.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 20-33, 39-44, 50-81, 88-98, and 100-102 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 20-33, 39-44, 50-81, 88-98, and 100-102 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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**DETAILED ACTION**

Claims 20-33, 39-44, 50-81, 88-98 and 100-102 are pending in the application.

***Election/Restriction***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 20-33, 39-44, 50-55, 88-94 and 100, drawn to compounds and method of use of compounds of formula II.

Group II, claim(s) 56-71, 95-96 and 101, drawn to compounds and method of use of compounds of formula III where B is purine.

Group III, claim(s) 56-71, 95-96 and 101, drawn to compounds and method of use of compounds of formula III where B is pyrimidine.

Group IV, claim(s) 72-81, 97-98 and 102, drawn to compounds and method of use of compounds of formula IV where B is purine.

Group V, claim(s) 72-81, 97-98 and 102, drawn to compounds and method of use of compounds of formula IV where B is pyrimidine.

The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special

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technical features for the following reasons: The claims are drawn to several independent and distinct structural formulas i.e. formulas II-IV which lack a common chemical structure in that Group II is cycloalkylphosphocholine, Group III is a heterocyclic substituted phospho moiety and Group IV is a heterocyclic substituted cycloalkylphospho moiety.

A telephone call was made to Gary D. Colby on January 6, 2000 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Coleman whose telephone number is (703) 305-1880. The examiner can normally be reached on Monday thru Friday from 9:00 AM to 5:30 PM.

The fax phone number for this Group is (703) 308-4734 for "unofficial" purposes and the actual number for **OFFICIAL** business is 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

*Mukund J. Shah*

**Mukund J. Shah**  
**Supervisory Patent Examiner**  
**Art Unit 1611**

*BC* Brenda Coleman  
January 6, 2000